

ITEM 6a

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Hearing Date: 11/14-17/00



STAFF REPORT: APPEAL SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Oxnard

DECISION: Approval with Conditions

APPEAL NO.: A-4-OXN-00-172

APPLICANT: Suncal Companies

PROJECT LOCATION: South of Wooley Road and east of Reliant Energy Canal, Oxnard, Ventura County

PROJECT DESCRIPTION: Development of the "Westport at Mandalay Bay" project on a 58.3-acre site, including removal of prime agricultural soil, creation of channels and waterways, subdivision, and the construction of 95 single family residences (83 with private boat docks), 35 residential duplex units, 88 townhouse condominiums, mixed-use development with 140 multi-family residential units and 14,000 sq. ft. of visitor-serving commercial uses, and 7-acres of public park area with trail system.

APPELLANTS: Commissioners Sara Wan and Cecilia Estolano

SUBSTANTIVE FILE DOCUMENTS: City of Oxnard Local Coastal Program, City of Oxnard Coastal Development Permit PZ 99-5-61 and Tentative Subdivision Map PZ 99-5-62

SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE EXISTS

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed.

The appeal contends that the approved project is not consistent with policies and provisions of the three planning documents that comprise the Local Coastal Program for the project site: the Mandalay Bay Specific Plan; the Coastal Zoning Ordinances; and the Coastal Land Use Plan. The appeals asserts that the project is not consistent with the Mandalay Bay Specific Plan with respect to the following provisions: permitted land uses as depicted on the land use map; required linear park and pedestrian/bicycle path as shown on park/circulation plan maps; public access provisions, both lateral and vertical access; single family residential use; residential net density; public boat slips; building height; and soil transfer program. The appeal further states that the project does not conform to policies of the Coastal Zoning Regulations with regard to coastal development permit procedures, recordation of easements and dedications, and visitor-serving commercial uses. Finally, the appeal states that the project is not consistent with the policies of the Land Use Plan relative to preservation of prime agricultural land.

Staff Note:

Appeal A-4-OXN-00-172 (Westport at Mandalay Bay) was originally scheduled for a substantial issue determination at the Commission's September 2000 hearing. The applicant requested a postponement of the substantial issue hearing. The applicant retained an agent shortly before the hearing and requested additional time to meet with staff to discuss the appeal.

Staff met with the applicant and their agent on September 27, 2000 to discuss the appeal. New information and additional explanation of several issues was provided to staff. Where applicable, this information is discussed in the findings below.

I. Appeal Jurisdiction.

The project site is located adjacent to the Reliant Energy Canal (formally the Edison Canal), a waterway that extends from Channel Islands Harbor northward to the Reliant Energy Plant at Mandalay Beach (Exhibit 1). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the City of Oxnard (Adopted April 10, 1996) indicates that the appeal jurisdiction for this area is the first row of parcels or 300 feet from the mean high tide line, whichever is the greater distance. As such, the City's coastal development permit for the subject project is appealable to the Commission.

[Staff would note that revisions were made to the Post LCP Certification map for the City of Oxnard in 1996 to correct a mapping error that existed with regard to the permit and appeal jurisdiction areas in the Ormond Beach area. Additionally, modifications were made to reflect current conditions on the ground in the Channel Islands Harbor area. Specifically, approximately 6.1-acres of channels were dredged for Phase I of the Mandalay Bay Specific Plan Development. The Post LCP Certification Map was updated to reflect that these channels were lying below the Mean High Tide Line (MHTL) and within the Commission's retained permit jurisdiction. Additionally, lands within 300 feet of the MHTL in these channels are subject to the Commission's appeal jurisdiction. None of these changes to the Post LCP Certification Map affect the project site considered herein.]

A. Appeal Procedures.

The Coastal Act provides that after certification of Local Coastal Programs (LCPs), a local government's actions on Coastal Development Permits in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of its coastal permit actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Appeal Areas.

Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is greater, on state tidelands, or along or within 100 feet of natural watercourses. (Coastal Act Section 30603[a]) Any development approved by a County that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act Section 30603[a][4]) Finally, developments which constitute major public works or major energy facilities may be appealed to the Commission. (Coastal Act Section 30603[a][5])

2. Grounds for Appeal.

The grounds for appeal for development approved by the local government and subject to appeal to the Commission shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in Division 20 of the Public Resources Code. (Coastal Act Section 30603[a][4])

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that a substantial issue exists with respect to the grounds of the appeal, substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on substantial issue. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three (3) minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. It takes a majority of Commissioners present to find that substantial issue is raised by the appeal.

4. De Novo Permit Hearing

If a substantial issue is found to exist, the Commission will consider the application de novo. The de novo permit may be considered by the Commission at the same time as the substantial issue hearing or at a later time. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in

conformity with the certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

B. Local Government Action and Filing of Appeal.

On July 18, 2000, the Oxnard City Council approved a coastal development permit (PZ 99-5-61) and an associated tentative subdivision map (PZ 99-5-62) for development of the Westport at Mandalay Bay project. Commission staff received the Notice of Final Action for the coastal development permit on July 19, 2000. A ten working day appeal period was set and notice provided beginning July 20, 2000 and extending to August 2, 2000.

An appeal of the City's action was filed by Commissioners Wan and Estolano during the appeal period, on August 1, 2000. Commission staff notified the City and the applicant of the appeal and requested that the City provide its administrative record for the permit. The administrative record was received on August 8, 2000.

II. Staff Recommendation on Substantial Issue

MOTION: *I move that the Commission determine that Appeal No. A-4-oxN-00-172 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-4-oxN-00-172 presents a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. Findings and Declarations for Substantial Issue.

The Commission hereby finds and declares:

A. Background.

1. Local Coastal Program Certification.

The Commission certified with suggested modifications the City of Oxnard's Land Use Plan (LUP) in July 1981. The City accepted modifications and the Land Use Plan was effectively certified in May 1982.

The City's Implementation Ordinances (Coastal Zoning Ordinance) was approved with Suggested Modifications in January 1985. The City accepted modifications and the Implementation Ordinances were effectively certified in March 1985.

Both the LUP and the Implementation Ordinances call for a specific plan to be approved for a 220-acre site identified as the Mandalay Bay site (the subject 58-acre project site is part of the overall 220-acre Mandalay Bay site). Both plans give specific policies and standards by which any specific plan would be evaluated. The approval of such a specific plan was required prior to any approval for individual development or subdivision within the 220-acre project area. The Mandalay Bay Specific Plan (MBSP) was developed by the owners of the 220-acre site and approved by the City in 1984. The City submitted the Mandalay Bay Specific Plan for consideration by the Commission concurrently with the Implementation Ordinances. The Mandalay Bay Specific Plan was approved with suggested modifications by the Commission as part of the Implementation Ordinances in January 1985. Effective certification of the specific plan took place in March 1985.

2. Past Commission Appeals.

The Commission has previously considered an appeal of a City of Oxnard coastal development permit for a project on the same 58-acre project site considered herein. In July 1992, the City approved a coastal development permit (City File No. 91-2) and tentative subdivision map (City File No. 4799) for the development of 156 single-family residential parcels with boat docks fronting five channels and a parcel for future commercial and recreation development, including a park site. The applicant of this project was Voss construction.

In its 1992 actions, the City acknowledged that a project with single family residences, private boat docks without continuous lateral public access was not consistent with the provisions of the Mandalay Bay Specific Plan. Because of the inconsistencies, the City approved an amendment to the MBSP at the same time as the coastal development and subdivision permits were approved. This amendment modified the Illustrative Plan,

Land Use Plan, Park Plan, Height Zone Map, Circulation Plan, and Phasing Plan in order to accommodate the Voss project as approved by the City. The amendment modified these plans in order to reconfigure the waterways, increase the open water area, reduce the lateral public access required along the waterways, reconfigure the required park area, and modify building heights. In approving the amendment, the City acknowledged that the existing specific plan required lateral access along all the waterways and that the specific plan did not provide for single family residences in the area of the approved project. The staff report to the City Council for the amendment and permits (6/16/92) states that:

Under the previous land use concept which included attached dwellings with common open areas, public access to the water was to be principally provided by "lateral" access along the waterways on the edge of the peninsula, similar to the existing Harbour Island Plan. This concept has not worked as well as originally anticipated. With the proposed amendment public access will be aggregated to the public access areas including the park, which has been moved to a more prominent location, and by lateral access in the mixed-use commercial area.

While the City provided notice of its final approval of Coastal Development Permit No. 91-2, the amendment to the MBSP was never submitted to the Commission for certification as a modification to the City's certified LCP.

An appeal [A-4-OXN-92-11 (Voss Construction)] of this project was filed with the Commission. Staff recommended to the Commission that substantial issue existed with regard to the public access/recreation, recreational boating, and agricultural policies of the LCP. In particular, the staff report discusses the issue of lateral access and its link to the development of 156 single family residences where the specific plan only provided for a very limited number of single family homes. The report states that:

The Specific Plan allows exceptions to the requirements of continuous lateral access throughout the development for limited single family waterfront home development, where adequate access exists nearby. Since the exception to the access requirements applies only to single family development, it is obvious that an increase would likely reduce public access overall. The project more than doubles in a single phase the number of single-family units contemplated by the certified LCP/Specific Plan for the entire 220-acre project.

The staff report noted that while the City had approved an amendment to the Mandalay Bay Specific Plan that accommodated the Voss project, the City did not submit this amendment to the Commission for certification. The staff report states that the City had a mistaken understanding that the specific plan was not part of the certified LCP and did not require certification by the Commission.

The appeal was scheduled for a substantial issue determination in August 1992. The Commission found that there was substantial issue raised by the appeal with regard to the Voss project's conformity with the City's certified Local Coastal Program (LCP). The

project applicant requested that the Commission's de novo consideration of the project be continued until such time as the LCP amendment had been submitted and considered by the Commission. The LCP amendment was never submitted to the Commission for certification. The Voss project was never considered de novo by the Commission. In October 1993, the project applicant requested that the permit application be withdrawn.

3. Staff Comments.

Staff has met with the project applicant to discuss the project as it was being developed and considered by the City. Staff expressed concern with regard to the provision of public access as well as visitor-serving commercial recreation uses. Staff related to the applicant the Voss permit and appeal history on the site (as discussed above).

In November 1999, Commission staff reviewed the Draft Supplemental Environmental Impact Report for the subject project and provided comments to the City (11/30/99 letter attached as Exhibit 11). Comments provided include discussion of the permit and appeal history on the site. Additionally, staff noted that the project considered in the DEIR was not consistent with various provisions of the LCP/Specific Plan. The inconsistencies relate to land use, public access and single family residential uses. Staff noted that the townhouse/duplex uses proposed were located within the area designated by the specific plan for mixed-use development, that the single family project with private boat docks occupied much of the area designated for linear park, and that the provided park areas appeared smaller than those on the land use map. Additionally, staff stated that the public access required in the LCP/Specific Plan was not provided in the project. Finally, staff commented that single family residences were not permitted in this portion of the specific plan area.

The City's EIR consultant did respond to the staff's concerns (Exhibit 12). The response states that the City determined that the project is consistent with the MBSP as well as the LCP because the MBSP is "illustrative" in nature and intended to provide flexibility for creative and marketable solutions to individual projects.

B. Local Coastal Program Provisions.

As described above, the coastal development policies and standards that apply to the subject project site are found in the three documents that make up the City's LCP, namely the Land Use Plan, Coastal Zoning Ordinance, and the Mandalay Bay Specific Plan.

1. Land Use Plan.

There are several policies and discussions in the LUP that specifically address development on the 220-acre Mandalay Bay site. These policies generally relate to agriculture, development, public access, and visitor serving commercial recreation.

In order to understand the intent of these policies, it is important to know the background of certification of the LUP. One of the key issues considered by the Commission in certifying the City's LUP was the protection of prime agriculture on the Oxnard Plain. The Mandalay Bay site was recognized as containing prime agricultural soils and as being continuously in agricultural production. The City made the case that there were urban conflicts (trespass, vandalism, theft, neighbor's objections to spraying) that adversely affected the continuation of agricultural production on the site. The City also maintained that development of the Mandalay Bay site would complete a logical, viable neighborhood and serve to stabilize the urban/rural limit line. Finally, the City proposed, through the LUP, to implement a program to transfer the prime soils from the Mandalay Bay site to agricultural sites with non-prime soils in order mitigate the loss of prime agricultural land by preserving its soils.

In approving urban use for the Mandalay Bay site, the Commission found that the experimental technique of soil transfer, if proven, could potentially be utilized in other areas as mitigation for the loss of prime agricultural soils, and as such could be considered to serve broader interests.

Further, the Commission agreed with the City's contention that the visitor serving and public recreational facilities to be included in the project area provide public benefits. The Commission's findings for LUP certification (July 9, 1981) state that:

If the issue were merely whether the agricultural land could be converted for such recreational uses, the answer would be clear. PRC Section 30222 clearly assigns priority for use of private lands to agriculture over public opportunities or coastal resources (this includes agricultural lands). In finding that the 220-acre parcel may be converted and developed as proposed, the Commission does not find that the recreational benefits of the project have priority over agricultural uses. It does, however, count these benefits in its decision and accord them some weight commensurate with their value under the Coastal Act.

Thus, although the substantial public access and recreational opportunities provided by the LUP designations and other policies of the LUP did not have priority over agricultural use of the Mandalay Bay site, the Commission did give great weight to the public benefit of such uses in certifying the LUP.

With regard to the subject Westport site, which is part of the overall Mandalay Bay site, the land use map shows three land use designations for the subject project site: "Planned Unit Development Residential"; "Mixed Use (Commercial/Residential)"; and "Recreation Area". The map is shown on Exhibit 3. As shown on this map, the LUP designates the area along all of the waterways for recreation. A large area adjacent to Wooley Road is designated for "mixed use" (commercial/residential), and the remainder of the site is designated for residential use.

In addition to the land use designations, there are several policies that specifically address the development of the Mandalay Bay site (Text of policies is attached as Exhibit 4). Policy No. 4 addresses methods to provide a buffer between development south of the urban-rural boundary (Wooley Road) and agricultural uses north of the boundary.

Policy No. 5 requires that, as a condition of approval for any development within the Mandalay Bay site, a "prime agricultural land maintenance program" (prime soils transfer) must be developed and implemented. This policy establishes the elements that must be part of the soil transfer program including size, location, and soil characteristics of soil recipient site(s), procedures for use of soil on the recipient site(s), timing for transfer, recordation of agricultural easements on recipient sites, and monitoring.

Policy No. 45 requires the development of a specific plan for the Mandalay Bay site and details the provisions it must contain. This policy sets forth the public access requirements that must be included in the specific plan. Policy No. 45 states that:

The lateral access requirement shall be a minimum of 50 percent of the total linear waterfront frontage and shall be dedicated and available for public access. Exceptions to continuous lateral public access shall be allowed only for limited single family waterfront home development where adequate alternative access exists nearby.

The combined vertical access frontage on the water is required to be at least 10 percent of the development's total waterfront linear footage. Recreation areas are to be distributed throughout the project area and linked by pedestrian and bike paths. Policy No. 45 also requires common recreational areas for the residents of permitted residential projects. This policy also sets forth the land uses that may be permitted and the percentage of the overall Mandalay Bay acreage that each land use may occupy. Policy No. 45 further addresses the development of an open body of water as well as public and private boat dock facilities. Finally, this policy requires a program of signage for public access and recreation facilities, the dedication of such areas and the development of public improvements with each phase.

Finally, Policy No. 72 of the LUP requires public access to and along the shoreline and the Inland Waterway for all new development. One exception is provided for the Mandalay Bay area:

For Mandalay Bay inland water development, exceptions to the requirement of continuous lateral public access may be made for single-family waterfront development, but in no case shall the total public lateral access be less than 50 percent of the total shoreline frontage of the project. All vertical access shall be located and designed to minimize impacts on surrounding residential areas (reference Policy No. 45)

2. Coastal Zoning Ordinances.

The coastal zoning map (Exhibit 5) shows one zone designation for the entire 220-acre Mandalay Bay site, which includes the subject project site. The designation is "Coastal Planned Community" Zone (CPC). The CPC zone applies only to the Mandalay Bay site. This zoning would allow only for agriculture/aquaculture uses or passive recreation uses on the property, unless a specific plan was developed and adopted prior to the approval of any coastal development permit for any other uses.

The CPC zone (The text of this zone is attached as Exhibit 6) details the components required to be included in the specific plan. Eight components are called out that must be included in the specific plan:

1. Access and recreation component which identifies the locations, standards, and quantification of the amount of land provided for lateral and vertical access;
2. Soil transfer program for relocation of the prime agricultural soils on the site;
3. Project and use map that shows the specific uses and densities for the land and water areas of the site;
4. Circulation plan which identifies streets, bike paths, and public parking areas;
5. Buffering and setback component that establishes building setbacks and agricultural buffers;
6. Urban design and landscape component to identify relationships between major design elements which establish the character of the development;
7. Utility and drainage facility component that shows sewer and storm water drainage facilities and street improvements;
8. Phasing component that indicates the phasing sequence for development and public access dedication and improvements.

In addition to the CPC zone, the Coastal Zoning Ordinances contain the development standards for the zones that are permitted in the MBSP, which are as follows:

- | | |
|---------|--|
| • R-W-1 | Single-Family Water Oriented |
| • R-W-2 | Townhouse, Water Oriented |
| • R-2-C | Coastal Low Density Multiple-Family |
| • R-3-C | Coastal Medium Density Multiple-Family |
| • CNC | Coastal Neighborhood Commercial |
| • CVC | Coastal Visitor-Serving Commercial |
| • RC | Coastal Recreation |

Finally, the Zoning Ordinance contains general provisions that apply to the Mandalay Bay site including coastal development permit requirements, and recordation of easements and dedications.

3. Mandalay Bay Specific Plan.

As required by the policies of the LCP, the owners of the Mandalay Bay property developed a specific plan for the whole site. The City considered and approved the Mandalay Bay Specific Plan for development of this property, finding it consistent with the provisions of the LCP. The staff report for the City's action approving the MBSP states that:

The Specific Plan document contains text and graphics which portray the result of the guidelines as established in the Specific Plan and Coastal Land Use Plan. Although the building site configurations shown are illustrative only, the waterway, park, open space, accessway, and street patterns will be implemented very closely to what is described in the plan document. The final configuration and amount of these factors would be established through the approval of tract maps and development permits (Coastal Development and Development Review Permits).

The staff report further states that the City's intention was for the MBSP to be consistent with the provisions of the Coastal Zoning Ordinance and that new development would be regulated by the development standards of the ordinance. The Commission considered the MBSP and certified it with suggested modifications along with the zoning ordinances.

As required by the LCP, the Mandalay Bay Specific Plan contains a land use map (Exhibit 7), park plan (Exhibit 8), height zone map (Exhibit 10), circulation plan (Exhibit 9), urban/rural buffer provisions, phasing plan, utilities and drainage component, and soil transfer program. The MBSP designates the land within the 220-acre site for four different land uses: "Residential", "Visitor Serving Commercial", "Mixed Use (Commercial/Residential)", and "Park". The Park Plan shows a linear park along the waterways, and pocket parks of varying size throughout the area. The Circulation Plan shows public and private drives of varying width and a pedestrian/bicycle path throughout the linear park areas.

As discussed above, the LCP recognizes that there can be conflicts between single family residential development and the provision of lateral public access. Policy No. 72 of the City's LUP provides that exceptions to continuous lateral public access in the Mandalay Bay area can be made for single family residential uses if adequate access exists nearby. The MBSP resolves this issue by only providing for a small area along Hemlock Street (located in the southeast area of the MBSP area) where single family residences may be approved. The MBSP states that single family residences may be provided in this area only as a transition between existing single family development adjacent to the MBSP area and the higher density uses allowed in the remainder of the MBSP area. In this area only, no linear park or pedestrian/bike path is required on the Land Use Map, the Park Plan Map, or the Circulation Plan. Continuous lateral public access along all waterways is required by the MBSP throughout the remainder of the specific plan area.

The land use map certified in the MBSP designates the Westport site for three uses: "Residential", "Mixed-Use", and "Park". As shown on this map, the MBSP designates the area along all of the waterways for "park". A large area adjacent to Wooley Road is designated for "mixed use" (commercial/residential), and the remainder of the site is designated for "residential" use. The park areas include a linear park along all the waterways that provides public access via a pedestrian/bike pathway within the park. This park area is also shown on the park plan certified in the MBSP, and the pedestrian/bicycle path is called out on the circulation plan.

C. Project Description.

The City's coastal development permit approved the "Westport at Mandalay Bay" project for the development of a 58.3-acre site (the site plan is shown as Exhibit 2). This project includes:

- Removal of prime agricultural soil from the project site;
- Creation of channels and waterways;
- Land division;
- Construction of 95 single family residences (83 with private boat docks), 35 residential duplex units, 88 townhouses;
- Construction of a mixed-use development with 140 multi-family residential units and 14,000 sq. ft. of visitor-serving commercial uses; and
- Development of 7-acres of public park area with trail system.

The project site is located adjacent to and south of Wooley Road, inland of the Reliant Energy Canal (Exhibit 1 shows the vicinity). This canal extends from Channel Islands Harbor north to the Reliant Energy Mandalay power plant. The canal is used to provide water for cooling at the plant. The canal itself is subject to the original permit jurisdiction of the Commission. The applicant has indicated their intention to submit a Coastal Commission permit application for canal improvements necessary to implement the subject development. The applicant has applied for a U.S. Army Corps of Engineers permit for improvements to the canal.

D. Appellant's Contentions.

The appeal filed by Commissioners Wan and Estolano is attached as Exhibit 13. The appellants contend that the project, as approved by the City of Oxnard, is inconsistent with various policies of the certified Local Coastal Program, which includes the Land Use Plan, Coastal Zoning Regulations, and the Mandalay Bay Specific Plan. In large measure, the appellant's assertions relate to the provision of public access and recreation opportunities as required by the LCP.

The appeal contends that the approved project is not consistent with the Mandalay Bay Specific Plan with respect to the following provisions: permitted land uses as depicted

on the land use map; required linear park and pedestrian/bicycle path as shown on park/circulation plan maps; public access provisions, both lateral and vertical access; single family residential use; residential net density; public boat slips; building height; and soil transfer program. The appeal further states that the project does not conform to policies of the Coastal Zoning Regulations with regard to coastal development permit procedures, recordation of easements and dedications, and visitor-serving commercial uses. Finally, the appeal states that the project is not consistent with the policies of the Land Use Plan relative to preservation of prime agricultural land.

E. Analysis of Substantial Issue.

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appellants did not cite the public access policies of the Coastal Act as a ground for appeal, although the public access policies of the LCP were cited. However, should the Commission find Substantial Issue based on the grounds that are cited, the public access of the Coastal Act would be addressed in the de novo review of the project.

A substantial issue does exist with respect to each of the grounds on which the appeal has been filed with one exception. The sole exception is the ground relating to the building height of the "mixed-use" development. As described in Section 1h below, additional information has shown that the height of the "mixed use" buildings is consistent with the MBSP. The approved project is inconsistent with other policies of the City of Oxnard Local Coastal Program for the specific reasons discussed below.

1. Mandalay Bay Specific Plan:

a. Land Use Map.

The appellants contend that the development, as approved by the City, does not conform to the land uses designated on the Land Use Map certified in the Mandalay Bay Specific Plan.

The land use map (Exhibit 7) depicts "park", "mixed use", and "residential" uses for the project site. It would be necessary to map the Specific Plan land uses on the site plan to definitively determine the exact areas where the project is not consistent with the permitted land uses. However, staff has made a comparison of the designated land uses on the Land Use Map with the approved site plan.

It is clear that the area of single family residences with private boat docks does not conform to the designation of linear park and pocket parks shown on the land use map along all waterways. Additionally, the marina area located adjacent to the mixed-use

area is significantly reduced in the approved site plan. A larger land area approved for single family residences is located there instead. Linear and pocket park areas shown adjacent to the mixed-use area do not appear to be provided in the approved site plan. The applicant has stated that a lateral public accessway is to be provided along the waterway between the "mixed use" development and the marina. This may be the intent of the applicant and the City, but this accessway is not clearly shown on the approved plans nor is it called out in the City's CDP.

Finally, the area in the approved project devoted to "mixed-use" development is significantly reduced from the area so designated on the Land Use Map. Most of the townhouse units and some of the duplex residential areas are located within this area designated for mixed-use residential/ visitor-serving commercial uses. The applicant has stated that the townhouse development can be considered part of the "mixed-use" development since residents of the townhouses can also utilize the commercial uses. However, the MBSP requires that: "Mixed-use will be considered as an appropriate land use, containing Neighborhood or Visitor Serving support commercial uses within the same complex or structure with residential uses". The townhouse development cannot be considered "within the same complex or structure", as it is a separate locked-gate community. Further, staff would note that even the reduced area of the development that is characterized as "mixed-use", (incorporating visitor-serving commercial uses with apartment uses), contains a very small area (less than 10 percent of total building area) devoted to commercial uses which would presumably be made available to the general public. As such, the Commission finds that the appellants' contentions raise substantial issue with respect to the grounds that the development, as approved by the City, does not conform to the land uses designated for the project site under the Mandalay Bay Specific Plan.

b. Park Plan and Circulation Plan Maps.

The appeal states that the project does not comply with the Park Plan or Circulation Plan Maps of the Mandalay Bay Specific Plan particularly with regard to the provision of the designated linear park with bike/pedestrian path along all waterways.

The park plan map (Exhibit 8) depicts public park areas of varying sizes as well as a linear park along all of the waterways, with the exception of the area where single family residences are permitted along Hemlock Street in the far southern portion of the specific plan area. The circulation plan map provided in the MBSP (Exhibit 9) indicates a pedestrian/bicycle path along all of the waterways. The portion of the Westport project approved for single family residences with private boat docks does not conform to the designation of park contained in the park plan map nor does it provide the pedestrian/bicycle path shown in the circulation plan. The Commission finds that this contention does raise substantial issue with respect to the grounds that the project, as approved by the City, is not consistent with the park or circulation plans of the specific plan.

c. Lateral Access.

The appellants assert that the project does not meet the requirements of the Mandalay Bay Specific Plan with regard to the provision of lateral public access.

The text of the Specific Plan states that:

The primary public access to the waterfront of this project is satisfied by a linear park which extends throughout the entire project, except where single family residences are proposed along Hemlock Street. This waterfront park will provide approximately 21,000 linear feet of lateral access for the public.

As described above, the park plan and circulation plan maps show this access extending continuously along the waterways. The portion of the project approved for single family residences with private boat docks does not provide this linear park. Additionally, it does not appear that the linear park has been provided in the mixed-use area of the approved project. The applicant has stated that a lateral public accessway is to be provided along the waterway between the "mixed use" development and the marina. This may be the intent of the applicant and the City, but this accessway is not clearly shown on the approved plans nor is it called out in the City's CDP. Therefore, the project as approved in the City's CDP does not conform to the lateral access requirement of the specific plan. Further, as detailed below, the City's CDP does not contain conditions that require easements or dedication of the lateral access in the linear park area that is provided by the project. The Commission finds that this assertion of the appellants raises substantial issue with respect to the grounds that the approved project does not meet the lateral access requirements of the specific plan.

d. Vertical Access.

The appellants additionally assert that the project does not meet the requirements of the Mandalay Bay Specific Plan with regard to the provision of vertical public access.

The text of the Specific Plan states that: "Vertical public access for vehicular, pedestrian, and bicycle access text and maps shall not be less than 10% of total linear waterfront access as depicted in the specific plan and use map (page 5)". The findings and conditions for the City's CDP approval do not address the provision of vertical access. It is unclear from the project plans whether this requirement is met. Further, the plan specifies that if the vertical access is not a public thoroughfare it must be legally restricted (by deed restriction or easement) for public use. The City's CDP approval contains no conditions that require easements or dedication of any vertical access to a public agency. Thus, the Commission finds that the appellants' assertion raises substantial issue with regard to the grounds that the project, as approved by the City, does not comply with the vertical access requirements of the Mandalay Bay Specific Plan.

e. Single Family Residential Use.

The appeal affirms that the project is at odds with the specific plan with regard to the approval of 95 single-family residences.

The text of the Mandalay Bay Specific Plan states that:

Approximately 30 single-family waterfront homes will be provided along the existing Hemlock Street to provide a comfortable transition between the existing single-family development to the south and the more intense uses contained within this plan. Two residential islands and a peninsula will accommodate higher density residential clusters with heights possibly varying from two or three stories to as much as ten stories.

As such, the specific plan does not provide for single family detached residences in the North/South Peninsula areas where the Westport project site is located. The project does not conform to this provision of the specific plan as it includes 95 single-family residential parcels (83 with private boat docks).

The applicant has stated that the MBSP provides for a maximum density and that since the approved Westport project is far less dense than the maximum allowed, it is therefore consistent. Staff acknowledges that typically implementation ordinances (or LUPs) establish a maximum allowable density or range of density and development may be approved which is less than the maximum. (Reduced levels of density may even be presumed to have fewer impacts.) However, in this case, the allowable density must be considered in concert with the pattern of development, location of the only single family residences allowed in the MBSP (Hemlock Street), and required public access.

The LCP recognizes that there can be conflicts between single family residential development and the provision of lateral public access. As described above, the City's LUP provides that exceptions to continuous lateral public access in the Mandalay Bay area can be made for single family residential uses if adequate access exists nearby. The MBSP resolves this issue by only providing for a small area along Hemlock Street (located in the southeast area of the MBSP area) where single family residences may be approved. In this area only, no linear park or pedestrian/bike path is required on the Land Use Map and the Park Plan Map. Continuous lateral public access is required by the MBSP throughout the remainder of the specific plan area.

Therefore, in this case, the residential product type (multi-family versus single-family) is not particularly important with regard to land use density. However, it is critical with regard to the intent of the MBSP to provide continuous lateral public access along all the waterways. The areas permitted for single family residential use provide only for private access to the waterways. The Commission finds that the appeal raises substantial issue with regard to the contention that the project is not consistent with this provision of the specific plan.

f. Residential Net Density.

The appellants state that the project does not comply with Mandalay Bay Specific Plan provisions regarding residential density.

The specific plan sets forth the total number of residential units (not including any mixed-use residential units) that can be approved within the plan area (960 total). Additionally, it provides a breakdown of the maximum number of units, unit type, acreage, and density for each potential phase (area) of the overall project. For the phase containing the proposed project site (South Peninsula, North Peninsula, and Northeast Shore Phase), the plan specifies a maximum of 218 **attached** dwelling units. The approved project includes 218 residential units (excepting the apartment units included in the mixed-use component of the project). However, the plan does not provide for **detached** single family residential units in this area of the specific plan. Again, the issue of the type of residential use permitted under the specific plan is not particularly important with regard to land use density as the density approved for the Westport project is less than the maximum allowed by the MBSP. However, it is critical with regard to the provision of the public access/recreational opportunities required by the specific plan (described above). Therefore, the Commission finds that there is substantial issue raised by the appeal with respect to the appellants' contention that the project does not conform to this requirement of the specific plan.

g. Public Boat Slips.

The appeal maintains that it is unclear whether the City approval conforms to the requirements of the Mandalay Bay Specific Plan with regard to the provision of public boat slips.

The plan states that:

The Specific Plan incorporates a minimum of 795 boat slips in the Specific Plan area. Thirty are allocated to the 30 single-family residential lots. One-half of the remaining will be available to the public.

The findings and conditions for the City's CDP approval do not address the number or public/private status of any boat slips to be provided by the project, with the exception of the 83 private boat docks associated with single-family residences. The site plan for the project shows a boat dock easement area in the channel adjacent to the "mixed-use" development. A more detailed plan provided by the applicant (Exhibit 14) shows 68 docks contained within this public marina area (although no information is provided regarding how the docks will be made available to the public). Based on this plan, of the 151 total docks approved as part of the project, 68 docks (45%) would be for public use. The applicant indicates that 10 to 20 additional public boat slips could be provided in the marina. If 15 additional public slips were provided, then there would be the same number (83) of public and private slips. However, the City's CDP contains no discussion

of the number of approved or potential public boat slips, nor does it contain conditions or other provisions to assure that such slips would remain available to the public. Therefore, the Commission finds that a substantial issue is raised with respect to the appellants' contention that the project does not meet the public boat dock requirement of the specific plan.

h. Building Height.

The appeal contends that it is unclear whether the approved project is consistent with the height standards and design concept of the specific plan.

The Mandalay Bay Specific Plan establishes a design concept for the islands and peninsulas of the plan area whereby views to and across the site would be accentuated. The plan states that:

Height zones have been established above grade as a part of the urban design concept to assure that project scale and massing conform to and accentuate the waterscape and island concepts. Buildings on the perimeter of the islands and peninsula will be restricted to three stories in height (45') while buildings on the interior may increase in height from five stories (75') to as much as ten stories (130').

There is also a "Height Zone" Map (Exhibit 10) within the plan that shows the heights allowed for each area. In the area of the project site, residential along the edges of the peninsula are allowed up to 3 stories and residential at the center of the peninsula would be allowed to extend up to 10 stories. Finally, there is a height zone applied to the mixed-use (residential/commercial) area, which is called "mixed height commercial". Unfortunately, the plan does not denote the range of heights that are allowed in the mixed height commercial area.

The single-family, duplex, and townhome residential uses would all be below 3 stories and 35 feet in height. Therefore, these uses are consistent with the heights allowed in the specific plan. However, the City's staff report for the coastal development permit indicates that the mixed-use portion of the project located at the northern edge of the peninsula was permitted at 4 stories (44', 10"). As part of the administrative record for the permit, the City provided full-sized plans of the project. These plans show that the "mixed use" project contains three stories of multi-family/commercial uses with one semi-subterranean story of parking garage below. Based on these plans, it is clear that the height of the "mixed use" project at three stories and just under 45 feet, is consistent with the requirements of the LCP. Therefore, the Commission finds that the appellants' contention does not raise substantial issue with regard to the consistency of the approved project with the height and design provisions of the Mandalay Bay Specific Plan.

i. Soil Transfer.

The appellants assert that the approved project does not meet all of the requirements of the Mandalay Bay Specific Plan with regard to the agricultural soil transfer program.

The specific plan requires a soil transfer program which implements Policy 5 of the Coastal Land Use Plan (discussed further below). The plan is required to address several parameters, including the acreage, soils characteristics, and location of the site(s) to receive the prime soil, as well as the method and timing of soil placement. Finally, the plan is required to provide a program for monitoring agricultural production on the recipient site. The findings and conditions for the City's CDP approval address the requirement for soil transfer. A site has been identified to receive the transferred soil and the applicant has applied for permits from the County of Ventura. However, there is no discussion of the applicant's development of a soil transfer program, especially with regard to any monitoring program. As such, the Commission finds that substantial issue exists with regard to the project's consistency with the agricultural soil transfer policies of the specific plan.

2. Coastal Zoning Regulations

a. Coastal Development Permit Requirement.

The appeal affirms that the approved coastal development permit did not include approval of aspects of the project for which a coastal permit is required under the Coastal Zoning Ordinance. These aspects include a land division, dredging or construction of waterways, and construction of seawalls and revetments.

The Coastal Zoning Ordinance states that:

A coastal development permit is required for all conditionally permitted uses, lot splits, and subdivisions within the individual coastal zones requiring a discretionary decision by the city as well as all projects meeting the definition of appealable developments...(Sec. 37-5.3.2)

The City concurrently considered a coastal development permit (PZ 99-5-61) and a tentative subdivision map (PZ 99-5-62) for the subject project. The two permit actions were addressed in one staff report to the Planning Commission. However, a separate resolution was adopted for the coastal development permit (CDP) and the tentative subdivision map. The project description, findings, and conditions of the City's CDP approval do not include the subdivision, dredging or construction of waterways, or construction of seawalls and rip-rap slope protection, all of which are integral to the approved project. This development would require the approval of a coastal development permit. The Commission finds that this contention of the appeal represents a substantial issue with respect to the grounds that the project is not consistent with the coastal permitting requirements of the Coastal Zoning Ordinances.

b. Recordation of Easements and Dedications.

The appellants contend that the project, as approved by the City, does not conform to the zoning ordinance with regard to easements or dedications for public recreational amenities.

The Coastal Zoning Ordinance states that:

Offers for or the execution of dedications or easements for coastal access, recreation, or open space purposes shall be recorded prior to or simultaneously with the recordation of the related land division. Where no land division is involved or required, such easements and dedications shall be recorded prior to the issuance of building permits or initiation of use, whichever comes first. (Sec. 37-1.4.14)

The approved project includes approximately 7-acres of public park, including a trail system. There are conditions of the City's CDP approval which require that certain equipment and amenities be provided at various areas of the parkland. However, there are no conditions that require easements or dedication of the property to a public agency.

The applicant has stated that a development agreement between the developer and the City provides for such public dedications. The development agreement does state that the monetary value of the 7.62-acres of public recreation areas included in the Westport project shall be credited towards any park fee obligation required by the City under the Quimby Act. The development agreement does not address the timing or method by which this land will be dedicated for public use. Further, staff would note that the development agreement could be revised in the future by agreement between the City and the applicant. As such, even if the development agreement required the dedication of public access and recreation, the City's CDP does not assure public availability of the approved access/recreation areas as required by the zoning ordinance. The Commission therefore finds that the appellants' assertion that the approved project is not consistent with this provision of the Coastal Zoning Ordinances does raise a substantial issue.

c. Visitor-Serving Commercial Uses.

The appeal states that it is unclear whether the uses permitted in the mixed-use project are consistent with the uses allowed by the Coastal Zoning Regulations. It further states that the City's approval does not include any condition that limits the uses to only those allowable under the zoning.

As detailed in the Coastal Zoning Regulations (and the Mandalay Bay Specific Plan), mixed-use development may be approved on the project site which includes the commercial uses provided for in the "Coastal Neighborhood Commercial Zone" (CNC)

and/or the “Coastal Visitor-serving Commercial Zone” (CVC) in combination with residential use.

The principal permitted uses allowed in the CNC zone include neighborhood services such as financial (banks), personal (barber, beauty shop, health spa, etc.), professional (real estate, medical), and public uses (park, library, etc.) as well as neighborhood sales such as eating and drinking (restaurant, café), retail (market, pharmacy, florist, etc.). Secondary uses in the CNC zone include commercial recreation, entertainment, service station, and restaurant.

The principal permitted uses allowed in the CVC zone include visitor-serving services such as commercial recreation (skating rink, campground, boat rentals, etc.), entertainment (theater, night club), service station, and tourist (hotels, convention facilities, vacation timeshares) as well as visitor-serving sales such as restaurants, and marina facilities (boat launching, yacht and boat sales, bait and tackle sales, etc.). Secondary uses allowed in the CVC zone include financial, personal, and professional services, public uses, drive-through restaurants, specialty shops and general retail.

The findings and conditions for the City’s CDP approval characterize the 14,000-sq. ft. of commercial space contained in the mixed-use component of the project as “visitor-serving” uses. The findings provide a breakdown of the commercial space into three categories: restaurant (3,000 sq. ft.); retail (2,000 sq. ft.); and office (9,000 sq. ft.). However, there is no discussion of the specific uses approved. General office use is not permissible under the CNC or CVC zones. It is unclear whether the approved commercial project would conform to the uses allowed in these zone categories. Finally, the City’s CDP approval does not include any condition limiting the future uses to be provided in the commercial portion of the mixed-use project.

Additionally, staff would note that although this portion of the development is characterized as “mixed-use”, incorporating visitor-serving commercial uses with residential uses, the portion of the project devoted to commercial uses which would presumably be made available to the general public is a very small percentage of the total building area approved (less than 10 percent). The Commission finds that this contention does raise substantial issue with respect to the grounds that the project, as approved by the City, is not consistent with the allowable uses under the Coastal Zoning Ordinances.

3. Coastal Land Use Plan

a. Prime Agricultural Land Maintenance Program.

Finally, the appellants contend that the approved project does not meet all of the requirements of the Coastal Land Use Plan with regard to the agricultural soil transfer program.

Policy No. 5 of the Land Use Plan (LUP) requires that development on the Mandalay Bay property mitigate the loss of prime agriculture on the site by transferring the prime soils from the project site to a site on the Oxnard plain which does not contain prime soils. This policy requires conditions of approval for development of the Mandalay site that address, at a minimum, five parameters. These parameters include the acreage, soils characteristics, and location of the site(s) to receive the prime soil, as well as the method and timing of soil placement. Finally, this policy requires that the applicant establish and implement a monitoring program in order to track the success of the soil transfer.

The findings and conditions for the City's CDP approval address the requirements of Policy No. 5 of the LUP. A site has been identified to receive the transferred soil and the applicant has applied for permits from the County of Ventura. Condition # 97 of the City's CDP states that:

Consistent with Policy #5 of the Coastal Land Use Plan, this permit is granted subject to approval of a coastal development permit by the County of Ventura for the recipient site for the agricultural soil transfer program.

The City does not address whether the recipient site meets the requirements of the LUP. The LUP requires the City to make a determination as to whether the five parameters identified above have been satisfied. There is no evidence in the record that the City addressed these parameters. Additionally, there is no discussion or condition regarding the required monitoring program. As such, the Commission finds that substantial issue exists with regard to the project's consistency with the agricultural soil transfer policies of the Land Use Plan.